IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

Sagat Singh **VS.** Union of India & Ors.

D.B. CIVIL SPECIAL APPEAL NO.651/1997
against the judgment dated 28.5.1997 passed
in S.B. Civil Writ Petition No.871/1990.

Date of judgment : 9th May, 2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE R.P. VYAS

Mr. L.D. Khatri for the appellant.
Mr. Pankaj Bohra for Mr. Ravi Bhansali for the respondents.

BY THE COURT:- (Per Hon'ble Mr. Rajesh Balia, J.)

Heard learned counsel for the parties.

This appeal has been preferred by an aged army personnel against the order of learned Single Judge passed in S.B. Civil Writ Petition No.871/1990 with the prayer to consider him eligible for pensionary benefits for the services rendered by him before 40 years.

According to the learned counsel for the appellant, the

appellant had served under Punjab Regiment from 1.2.1941 to 17.7.1948 for 7 years 5 months and 16 days and thereafter he served at Ganga Jaiselmer Risala from 16.9.1948 to 13.5.1955 that is to say for 6 years 7months and 27 days. Thereafter he has served on NCC Cadre for more than 7½ years from 10.6.1963 to 12.12.1969. He made a claim for pension by counting the aforesaid period which makes him qualified for getting retiral benefits. However, there is no dispute before us that the services rendered under NCC is not eligible to be included in qualifying service for grant of retiral benefits.

The writ petition was dismissed because the counsel for the petitioner has failed to appear when the matter was called on 28.5.1997. The learned Single Judge instead of dismissing the writ petition for want of prosecution, examined the merit of the case and found that eligibility of pension is 15 years whereas petitioner has served for 10 years and 216 days that is to say the period served under NCC was excluded while computing the period and also on the ground of latches. It was observed by the learned Single Judge that remaining period of 4 years and 149 days could not be condoned.

In this appeal, the reply has been submitted by the respondents and it has been contended that as per Annex.R/1 the services rendered at Ganga Jaisalmer Risala prior to 1.5.1952 and at

NCC are not eligible for qualifying service and therefore, the said period is not includable. Excluding that period, the petitioner's qualifying service comes to 10 years 216 days hopelessly falls short for qualifying service. However, a perusal of Annex.R/1 itself shows that the contention on that premise is not found well and is not sustainable. While para 1 of the Annex.R/1 dated 18.9.1951 speaks about future recruits for the Ganga Risala and Jaisalmer Camel battery being enrolled on the same terms and conditions of service as are applicable to men of the Infantry.

It is clearly mentioned in the Annex.R/1 that service rendered in Ganga Risala are not counted towards the minimum period which is required to be engaged that is to say 7 years colour service followed by 8 years reserved service.

We have already noticed above that now there is no dispute that the services rendered in NCC is not countable towards qualifying service and that leaves 14 years, 3 months and 3 days as per his assertion. This fall less than one year of qualifying service of 15 years required for grant of pension.

The petitioner has brought to our notice that he has also approached the competent authority of Ministry of Defence for considering his case for condonation of shortfall in qualifying service for grant of

pension. He invited our attention towards the letter dated 14th August, 2001 issued from the Government of India, Ministry of Defence about the approval in respect of subject indicated below which included the condonation of shortfall in qualifying service for grant of pension in respect of PBOR beyond 12 months. He also placed before us the letter received from the Record Officer of OIC Records addressed to the office of The Pr. CDA (P), Allahabad seeking opinion whether statement of the case for condonation of shortfall period as per letter dated 14th August, 2001 can be initiated to Army Headquarters before the judgment of Civil Appeal No.651/97. It will be apposite to refer to the letter in full :-

"No.G2/III/1023/GDR/04
O/o The Pr. CDA (P)
Allahabad

Dated 27.9.2004

To
The Officer Incharge
Records, the Grenadiers
P.B. No.14
Jabalpur

Sub:- Grants of Service Pension in r/o. No.1340 5225
Ex. Hav. Sagat Singh.

The above named individual has represented to this office through Pension Adalat held at Jaipur for counting of NCC Service towards Army Service and grant of Service Pension.

In this connection, it is intimated that there is no provision for counting of service rendered in NCC for Pensionary benefits from Army. This aspect has already been clarified vide Army Hqrs. Letter No.B/39804/Delhi/Pen

Adalat/A1/PS-4 (Pen cell) dt.20.3.89.

The above named individual has filed a special appeal No.651/97 in the High Court at Jodhpur. A copy of the petition is forwarded herewith for intimating present position of the case.

However, it is seen that the individual has render 14 years 3 months & 3 days service which is short by 272 days for getting Pensionary award. The statement of the case may please be forwarded to Army Hqrs. For condonation of above period as the period for condonation is less than one year which falls under the power of competent authority. In this connection, MOD letter dt.14.8.01 refers.

Sd/-
AOC(P)

Copy to :-
(1) Ex.No.13405225
Har. Sagat Singh C/o Back Singh
Vill. Post -Habur (Punam Nagar)
Distt. - Jaisalmer (Raj.) --------- for information
(2) The OIC
DPA (Local)-----for information w.r.f. Jaipur/DPA case No.19 dt.21.9.04.

Sd/-
AO(P)"

Apparently, while the petitioner's case fall within the zone of consideration for condoning the shortfall being less than one year, the respondent authorities are not considering that case because of the pendency of this litigation. We, in the circumstances, feel it just and proper to dispose of the writ petition by directing the respondents to consider the case of the petitioner for condonation of shortfall in qualifying service in accordance with law within a period of 3 months and inform the

result to the petitioner.

Accordingly, the appeal is allowed. The judgment under appeal is set aside and the writ petition is disposed off in the aforesaid directions. There shall be no orders as to costs.

[R.P. VYAS], J. [RAJESH BALIA], J.

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